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Connections and Tensions Between Nationalist and Sustainability Discourses in the Scottish Legislative Process

ANDREA ROSS* AND RHYS JONES**

This article illustrates how sustainability and nationalist discourses have operated together in practice in Scotland. Potential connections and tensions between nationalist and sustainability discourses are identified and used to analyse the events leading up to the passage of the Climate Change (Scotland) Act 2009 and the Regulatory Reform (Scotland) Act 2014. The analysis reveals how in certain contexts, the tensions and connections between sustainability and nationalist discourses can align to reinforce transformative initiatives while in other contexts, the tensions can lead to initiatives being watered down or set aside. The article concludes that more could be done to emphasize the connections between the two discourses. Engagement at the level of 'nation' can lead to sustainability discourses that are more attuned to nationalist values, increased public understanding, and acceptance of sustainable development, as well as additional opportunities for debate, public participation, and education.

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INTRODUCTION

The rise of the Scottish National Party, the massive turnout for the Scottish referendum on independence,¹ and successful events such as the Glasgow Commonwealth Games are indicative of a growing sense of nationalism within Scotland. One consequence of this heightened nationalism has been to raise discourses about Scottishness beyond sentiment and rhetoric to being something potentially transformative. During the same period, the international community, states, regions, businesses, and individuals have all struggled to move beyond the rhetoric of sustainable development to promote the transformational changes needed to effectively tackle modern problems such as climate change, poverty, biodiversity loss, increasing consumption, and limited resources.

This article illustrates how sustainability and nationalist discourses have operated together in practice in Scotland.² More specifically, it shows how in certain contexts, the tensions and connections between sustainability and nationalist discourses can align to reinforce transformative initiatives while in other contexts, the tensions between the two can lead to initiatives being watered down or set aside. It is hoped that this type of work will improve understanding of how sustainable development practices in certain places is informed by the particularities of those places. More radically, by developing a better understanding of the connections and tensions between discourses of nationalism and sustainable development, more effective and transformative interpretations of sustainable development may be promoted.

This research is primarily based on a thorough review of the relevant legislation, policy, and academic and other commentary in press and online. It also draws on previous research in law, politics, and geography on sustainability, nation, identity, and multi-level governance. Semi-structured interviews with key actors were used to close any gaps, better understand context, and check certain findings. The article begins with a short history of sustainable development and suggests certain key features as essential for moving sustainability discourses away from 'business as usual' to more transformative action. Previous research into sub-state efforts in promoting transformational sustainable development is examined and a possible role for 'nationalist discourses' highlighted. Potential connections and tensions between nationalist and sustainability discourses are then identified. These are used to analyse the events leading up to the passage of the Climate Change (Scotland) Act 2009 and the Regulatory Reform (Scotland) Act 2014. The article concludes that while there is no guarantee that nationalist discourses will promote transformative visions of sustainability, more could

1 On 18 September 2014 Scots were asked whether they thought Scotland should be an independent country. Over 85 per cent of those eligible voted and while most voted to stay in the United Kingdom, 45 per cent voted in favour of independence.

2 The specific terminology used in this article is set out in section 2.

be done to emphasize the connections between the two discourses. Engagement at the level of ‘nation’ can lead to sustainability discourses that are more attuned to nationalist values, a higher level of public understanding, and acceptance of sustainable development, as well as providing additional opportunities for debate, public participation, and education.

TERMINOLOGY

This article is packed with ambiguous terms and it is very easy for the messy terminology to prohibit any sort of analysis. The definitions used here are not without controversy, do not sit neatly with every definition used elsewhere, and most are deliberately open-ended enough to allow multiple variations to exist.

‘Nation’ in this article is defined as ‘a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common *culture*.’³ As James accounts, it is also useful to remember that:

A nation is at once an objectively abstract society of strangers, usually connected by a state, and a subjectively embodied community whose members experience themselves as an integrated group of compatriots.⁴

Scotland is described in political and public discourse as a separate nation, albeit one, according to some commentators, that possesses links to British forms of identity.⁵ Interestingly, as a Union, the concept of nation in the United Kingdom is different from statehood especially in Scotland, Wales, and Northern Ireland.⁶ Thus, for our purposes, it makes sense to see Scotland as a nation. Indeed, Keating notes that ‘Most people in Scotland are both British and Scottish, with only a minority seeing these as exclusive.’⁷

As a result, ‘national’ as used here is broader than that belonging to a sovereign state. In this article, the sovereign state is referred to as ‘the state’ and where power is internally shared through a federal or devolved system of division of powers, these bodies are referred to as sub-states. Thus, states like United Kingdom and Canada are multi-national sovereign states who encompass more than one national community within their boundaries.

3 I. Jughashvili, ‘National Question’ (in Russian) (1913) *Prosveshcheniye* (nos. 3–5).

4 P. James, *Nation Formation: Towards a Theory of Abstract Community* (1996) 34.

5 M. Keating, ‘The strange death of Unionist Scotland’ (2010) 45 *Government and Opposition* 365, at 373; A. Henderson and N. McEwen, ‘Do Shared Values Underpin National Identity? Examining the Role of Values in National Identity in Canada and the United Kingdom’ (2005) 7 *National Identities* 173.

6 *id.*

7 *id.*

Scottish national identity is embedded within the British national community and as such, Scotland can be referred to as a 'sub-state nation'.⁸

'Nationalist discourses' refer to the words and practices of a range of different individuals and organizations involved in promoting particular nations or, as Brubaker has put it, the 'group-making project of the nation'.⁹ As Billig has shown, we are all – whether we like it or not – bound up in the discourses of nationalism.¹⁰ As such, nationalist discourses can be articulated by a suite of different organizations, ranging from political parties, governmental organizations, and NGOs engaged in different aspects of social and environmental life (including social media). Nationalist discourses can support a sense of belonging to the imagined community of the nation. While perceived shared values are not in themselves a sufficient basis to build national unity and are often very hard to identify, the discourse of shared values can reinforce a sense of belonging, even to newcomers, and serve as a tool in the politics of nation building.¹¹ Moreover, nationalist discourses include but extend well beyond the policies and practices of nationalist parties or how governments use territorial distinctiveness or what is often referred to as 'territorial politics' to maximize their region's autonomy and its status within the larger state and beyond.¹² The result is that these discourses can accommodate a plurality of views and visions. Indeed, notions of Scottish identity are also broad, varied, and sometimes contradictory. As Keating explains: 'For some, Scottishness is a cultural and historical identity with little relevance to constitutional issues; at the other extreme, it leads directly for support for independence.'¹³

Our interpretation of 'sustainability discourses' includes those words and practices promoted by a range of individuals and organizations, which focus attention on the need to consider the impacts of current practices on environmental, economic, and social futures.¹⁴ However, as is discussed below, an objective of this article is to establish if connections exist that can promote more transformative sustainable development. To this end, we have narrowed the popular Brundtland definition slightly to focus more specifically on those discourses that prioritize the long-term effects of policy and decisions and go beyond 'business as usual' solutions. This interpretation still allows significant variation, especially in relation to the role of the economy and growth in

8 Henderson and McEwen, op. cit., n. 5.

9 R. Brubaker, *Ethnicity Without Groups* (2004); C. Calhoun, *Nationalism* (1993).

10 M. Billig, *Banal Nationalism* (1995).

11 Henderson and McEwen, op. cit., n. 5, pp. 188–9.

12 N. McEwen and E. Bomberg, 'Sub-state Climate Pioneers: The Case of Scotland' (2014) 24 *Regional and Federal Studies* 63, at 69; Calhoun, op. cit., n. 9.

13 Keating, op. cit., n. 5, p. 377.

14 World Commission on Environment and Development (WCED), *Our Common Future* (1987) (the Brundtland Report).

sustainable development and the extent to which operating within the Earth's limits should be explicitly prioritized.¹⁵

Finally, the analysis that follows covers not only the content or substance of nationalist and sustainability discourses but also the processes and practices that characterize them including, for example, the emphasis and value placed on wider participation and the need for credible scientific evidence in policy and decision making.¹⁶

THE NEED TO ACCELERATE PROGRESS TOWARDS SUSTAINABLE DEVELOPMENT

In 1987 the World Commission on sustainable development produced a report, *Our Common Future*, that offered sustainable development as a means to address the growing challenges of environmental degradation and world poverty at the same time. 'Sustainable development' was defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (the Brundtland definition).¹⁷ It proved popular and resilient as an ideal largely due to its malleability and became a global objective in 1992 following the United Nations Conference on Environment and Development (or Earth Summit) in Rio de Janeiro.¹⁸ Since then, sustainable development has been included in numerous multilateral and bilateral conventions and treaties as a binding objective.¹⁹ It is an objective of the European Union,²⁰ and a key policy objective for many cities, businesses, and individuals.²¹

Out of Brundtland's wide parameters, a powerful discourse has emerged that combines an accepted global definition with a degree of fluidity that

15 For differing views, see United Nations Environment Programme (UNEP), *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication* (2011), at <[www.unep.org/greeneconomy/Portals/88/documents/ger/ger_final_dec_2011/Green per cent20EconomyReport_Final_Dec2011.pdf](http://www.unep.org/greeneconomy/Portals/88/documents/ger/ger_final_dec_2011/Green%20EconomyReport_Final_Dec2011.pdf)> 17, 259; T. Jackson, *Prosperity without Growth: The transition to a sustainable economy* (2009).

16 Organisation for Economic Cooperation and Development (OECD), *Improving Policy Coherence and Integration for Sustainable Development: A Checklist* (2002).

17 WCED, op. cit., n. 14.

18 UN General Assembly (UNGA), Agenda 21, 1.1, U.N. Doc. A/CONF.151.26 (1992).

19 For example, Biodiversity Convention.

20 Treaty on European Union, Article 3; Treaty on the Functioning of the European Union, Article 11.

21 See, for example, Singapore Government Ministry of the Environment and Water Resources and Ministry of National Development, *Sustainable Singapore Blueprint 2015*, at <<http://www.mewr.gov.sg/ssb/>>; ARCADIS, *Sustainable Cities Index 2015*, at <<http://www.sustainablecitiesindex.com/>>; Marks and Spencer plc, *Plan A* (2015), at <<http://corporate.marksandspencer.com/plan-a>>; Munich Airport, *Strategy 2025*, at <<http://www.munich-airport.de/en/company/konzern/strategie/index.jsp>>.

encourages states, organizations, and individuals to work within their own detailed interpretations based on particular circumstances. However, this strength is also a downfall and French describes three main tensions within the Brundtland definition.²² Tensions exist in relation to the use of environmental resources, operating within the Earth's limits and the extent to which natural capital can be replaced or offset by human or man-made capital.²³ There is also tension between the environment and humans, intra-generational equity among states and within states, and intergenerational equity between the present and future generations.²⁴ Finally, tensions revolve around the role of the economy and the market, and the need for economic growth in sustainable development.²⁵ As a result, the Brundtland definition, while excluding some development as unsustainable, is sufficiently broad to permit a wide range of interpretations to still be considered legitimate.²⁶

While there is no shortage of examples of efforts to foster economic development, social development, and environmental protection at the same time through energy efficiency, healthy living initiatives, immunization, organic food production, recycling, and water use efficiency, these efforts have been swamped by the effects of unsustainable development, including, but not limited to: growing greenhouse gas emissions, population change, poverty, and reduced biodiversity.²⁷ The present human population is currently using the equivalent of 1.5 planets to support our activities; high-income countries have an ecological footprint five times greater than that of low-income countries, and 'business as usual' projections estimate that we will need the equivalent of two planets by 2030 to meet our annual demands.²⁸

We are not getting the balance right. Many of the weak or 'wish list' approaches to sustainable development use a three-pronged approach to balance economic, social, and environmental factors which are then portrayed as win-win-win scenarios. These weak approaches still advocate high economic growth and are based on the premise that technology and international trade will ensure there are always enough resources to meet cultural or human carrying capacity.²⁹ These approaches can justify just about anything so long as it promotes one of the three pillars and as such, can

22 D. French, *International Law and Policy for Sustainable Development* (2005) 10–34.

23 D. Pearce, *Blueprint 3: Measuring Sustainable Development* (1993) 15–16; J. Bowers, *Sustainability and Environmental Economics: An Alternative Text* (1997) 194.

24 French, op. cit., n. 22, pp. 30–3.

25 id., p. 26

26 A. Ross, 'Sustainable development in Scotland post devolution' (2006) 8 *Environmental Law Rev.* 6.

27 See International Panel on Climate Change (IPCC), *Climate Change 2014 – Synthesis Report* (2014).

28 WWF et al., *The Living Planet Report 2013* (2013).

29 See, for example, statistics on automobiles. Department for Transport et al., *Transport Statistics for Great Britain 2009 35th edition* (2009) chs. 3, 9.

lead to ‘business as usual’. By failing to prioritize ecological sustainability, weak approaches to sustainable development allow ‘short-termism’ to prevail, with little or no consideration given to the Earth’s limits, the needs of future generations or indeed, the needs of the poorer members of the present generation.³⁰

KEY FEATURES OF GOOD SUSTAINABLE DEVELOPMENT GOVERNANCE

Studies broadly agree that two significant changes are required for more transformative sustainable development. The first change is largely institutional and requires the full integration of environmental protection concerns, and more broadly, sustainable development, into all forms of policy and decision making.³¹ However, success is dependent on the second significant change, which is a cultural acceptance and understanding that prioritizes operating within the Earth’s limits and thinking about the long-term effects of policy and decisions.³² Articulating these changes into policy is not radical. The OECD has stated that: ‘good governance and sound public management are preconditions for the implementation of sustainable development policies.’³³ Similarly, Dernbach has observed that:

much of what is required for national governance for sustainable development is also required for good governance in general ... [including] effective governmental institutions and national laws, a favourable investment climate, informed and science-based decision making, and access to justice.³⁴

Arguably, one of the best articulations of these features is from the United Kingdom. *One Future – different paths: The UK’s shared framework for sustainable development* was published jointly by all four United Kingdom administrations in 2005.³⁵ The framework set out five principles:

- 30 D. Helm, ‘Objectives, instruments and institutions’ in *Environmental Policy Objectives, Instruments and Implementation*, ed. D. Helm (2000) 12; A. Ross, *Sustainable Development Law in the UK – From Rhetoric to Reality* (2012) chs. 4, 14.
- 31 OECD, op. cit., n. 16; P. Hardi and T. Zdan (eds.), *Assessing Sustainable Development: Principles in Practice* (1997); J. Dernbach, ‘Targets, timetables and effective implementing mechanisms: necessary building blocks for sustainable development’ (2002–2003) 27 *William & Mary Environmental Law and Policy Rev.* 79; Division for Sustainable Development, UNDESA, ‘Guidance in preparing national sustainable development strategy: managing sustainable development in the new millennium’ (2002) DESA/DSD/PC2/BP13.
- 32 UNEP, op. cit., n. 15; Jackson, op. cit., n. 15; T. O’Riordan, ‘Sustainability in an age of austerity’ (2011) 23 *Environmental Law & Management* 160.
- 33 OECD, op. cit., n. 16, p. 2.
- 34 Dernbach, op. cit., n. 31, pp. 104–5; Hardi and Zdan, op. cit., n. 31.
- 35 HM Government, Scottish Executive, Welsh Assembly Government, Northern Ireland Office, *One future – different paths: the UK’s shared framework for sustainable development* (2005) 8.

living within the Earth's environmental limits; ensuring a strong, healthy, and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibility. The first two principles are often held out as the overall desired outcomes and the last three are considered the enablers or means of achieving these objectives. In research studies, the framework is regularly singled out as good practice.³⁶ Its principles include environmental limits and refer to a sustainable economy rather than economic growth. The development of the strategy involved multiple levels of government and therefore it speaks to each level.³⁷ As its title suggests, the administrations were to then publish their own strategies based on the principles in the framework but in line with the needs of their constituent areas. As discussed below, since 2007 sustainable development policy in Scotland has changed significantly. That said, the Scottish government, at least in its rhetoric, remains committed to the five principles in the 2005 framework.³⁸

THE ROLE OF STATES, SUB-STATES, AND NATIONS IN ACCELERATING PROGRESS TOWARDS SUSTAINABLE DEVELOPMENT

Many global challenges need to be tackled by all levels of governance and, furthermore, these efforts need to be coordinated. However, while the challenges being faced by humanity are very often global in nature, in a world of sovereign states, each with considerable authority within its own borders and some influence outside its borders, there is no other choice but to rely on state governments to deliver the transformation necessary for long-term wellbeing, resilience, and sustainability. Where legislative and executive power is shared, this is also true for sub-state bodies in federal or devolved states. This is the view taken in the official outcome document of the United Nations Conference on Sustainable Development, Rio de Janeiro (Rio +20), entitled *The Future We Want*, which emphasizes the critical need to accelerate progress toward sustainability³⁹ and encourages individual governments and others to explore the 'Future We Want' for themselves.⁴⁰

36 D. Swanson and L. Pinter 'Governance strategies for national sustainable development strategies' in OECD, *Institutionalising Sustainable Development* (2007) 34, 56.

37 id.

38 Scottish Government, *Scottish Planning Policy* (2010) para. 35; Scottish Government, *Scottish Planning Policy* (2014) para. 25.

39 UN Conference on Sustainable Development (UNCSD), *The Future We Want*, UN Doc. A/66/L.56 (24 July 2012) para. 19.

40 UNCSD, *Rio+20 Voluntary Commitments* (2012), at <<http://www.uncsd2012.org/voluntarycommitments.html>>.

Unlike in post-colonial and post-socialist countries,⁴¹ very little academic work examines specifically the potential connection between discourses of sustainable development and discourses of nationalism in Western countries. This failure may be due to an impression that the kinds of sustainable development that are developed and implemented in the West are unproblematic since they adhere to accepted Western and scientific norms surrounding the meaning of sustainable development. Previous research that has considered the role of nation-states in shaping sustainable development policies and strategies tends to focus on the organizations and practices of the state, and there is little explicit treatment of the connections between sustainable development and the discourses of nationalism.⁴² Other work has examined the forms of environmental politics that characterize some Western states, for example, exploring the relationship between Plaid Cymru, the national Party of Wales, and the Green Party,⁴³ and the link between territorial identity and Scotland's ambitious climate change and renewable energy programmes.⁴⁴ However, this work deals largely with the links between nationalism and environmental or climate discourses, and not the broader sustainable development agenda. It also tends to think of nationalist discourses in terms that are too exclusive in nature. Nationalist discourses include but extend well beyond the policies and practices of nationalist parties or how governments use territorial distinctiveness to maximize their region's autonomy and its status within the larger state and beyond.⁴⁵

41 J.D. Oldfield, 'Russia, systemic transformation and the concept of sustainable development' (2001) 10(3) *Environmental Politics* 94; J.D. Oldfield and D.J.B. Shaw, 'V.I. Vernadsky and the noosphere concept: Russian understandings of society-nature interaction' (2006) 37 *Geoforum* 145; R. Black and E. Watson, 'Local Community, Legitimacy, and Cultural Authenticity in Postconflict Natural Resource Management: Ethiopia and Mozambique' (2006) 24 *Environment and Planning D: Society and Space* 263; X.A. de Sartre and R. Taravella, 'National sovereignty vs. sustainable development: lessons from the narrative on the internationalization of the Brazilian Amazon' (2009) 28 *Political Geography* 406; K.Z.S. Schwartz, 'Wild horses in a European wilderness: imagining sustainable development in the post communist countryside' (2005) 12 *Cultural Geographies* 292.

42 H. Bruyninckx, S. Happaerts, and K. van den Brande (eds.), *Sustainable Development and Subnational Governments: Policy-Making and Multi-Level Interactions* (2012); E. Royles and N. McEwen, 'Climate change policy, multi-level governance and inter-governmental relations in a devolved UK' (2014); Ross, op. cit., n. 30.

43 R. Jones and C. Fowler, *Placing the Nation: Aberystwyth and the Reproduction of Welsh Nationalism* (2008).

44 McEwen and Bomberg, op. cit., n. 12.

45 id., p. 69; Calhoun, op. cit., n. 9.

POTENTIAL CONNECTIONS AND TENSIONS BETWEEN NATIONALIST AND SUSTAINABILITY DISCOURSES

Effective sustainability discourses will reflect key features of good sustainable governance including but not limited to: taking the long-term view; integrating environmental concerns into decision making; relying on sound science; promoting wide participation and accountability. We see both connections and tensions between these features and those prominent in nationalist discourses. We have identified five features of nationalist discourses that tend to complement or connect with sustainability discourses. These mainly flow from a mutual aim to improve wellbeing, progress, and develop. Conversely, we have identified three potential tensions between the two discourses that are worthy of further examination. As will be discussed in detail below, these tensions relate to the fact that the two discourses often operate at different spatial and temporal levels. Each feature is discussed generally then used to justify our choice of study area – Scotland. These eight features provide the framework for analysing the two case studies.

1. *Capacity to make transformative change*

As discussed above, effective sustainability discourses require some legal, financial, moral, and/or administrative capacity to integrate environmental concerns into key decision-making processes.⁴⁶ Capacity varies between nations and even sovereign states. It is influenced by constitutional and legislative power, economic and natural resources, civil society networks, and political factors, such as leadership and political will.⁴⁷ It is also limited by the constraints imposed by multi-level governance.⁴⁸ For example, China has significantly more capacity on the world stage than Malta as a small state subject to the constraints of the European Union. Prior to devolution, Scotland was a ‘nation’ with a strong identity and significant resources but only limited capacity to deal with its own affairs. Under the Scotland Act 1998, full legislative and ministerial⁴⁹ powers were transferred from the United Kingdom parliament to the newly created Scottish parliament and Scottish government,⁵⁰

46 Bruyninckx et al., op. cit., n. 42; J. Porritt, *The standing of sustainable development in government* (2009); McEwen and Bomberg, op. cit., n. 12.

47 Royles and McEwen, op. cit., n. 42.

48 McEwen and Bomberg, op. cit., n. 12.

49 Where previously power lay with the Secretary of State, it now lies with ‘the Scottish Ministers’.

50 The statutory term in the Scotland Act 1998 is ‘Scottish Executive’, but since 2007 (when a minority Scottish National Party government was formed) the term ‘Scottish Government’ has been widely adopted and is given statutory acceptance in the current Scotland Bill.

except for certain reserved matters.⁵¹ Responsibility for the environment, agriculture, forestry, fishing, town and country planning, education, and health, among other things and subject to the rather stringent constraints of EU law, now lie with the Scottish authorities.⁵² Many of these powers are integral to accelerating progress towards sustainability. Many other powers have been delegated to the Scottish ministers through executive devolution.⁵³ Further powers were devolved in 2012 including a new Scottish rate of income tax (up to 10p) and borrowing powers worth £5bn. Following the No vote for independence in September 2014, there is cross-party agreement to further increase Scotland's powers.⁵⁴ The Scotland Bill introduced in the United Kingdom parliament in May 2015, gives Holyrood control over income tax rates and bands, a half share in VAT revenues, and a greater say over welfare powers in Scotland.⁵⁵ However, the SNP, buoyed by its success in the British general election in 2015, (56 of Scotland's 59 MPs are SNP), is pressing for full fiscal autonomy in Scotland, calling for further powers over employment laws, the minimum wage, and business taxes also to be devolved.⁵⁶ Where these powers ought to lie is beyond the scope of this article, and while issues of autonomy, coordination, and economies of scale are relevant to sustainability, as noted above, increased legislative and executive capacity on its own is insufficient to deliver change. Real transformation depends on the political will to make the tough decisions needed to accelerate progress towards sustainable development, and this often depends on cultural acceptance and understanding.

2. The space, time, and processes to promote more representative decision making

Effective stakeholder involvement and efficient knowledge management are considered essential to transformative sustainable development.⁵⁷ Principle 10 of the Rio Declaration on Environment and Development provides that 'environmental issues are best handled with participation of all concerned citizens at the relevant level.'⁵⁸ Meaningful public engagement in the

51 The reserved matters are set out in Schedule 5 to the 1998 Act, with further restrictions stated in Schedule 4. The United Kingdom Parliament retains the power to legislate on any subject but subject to the convention this is only with the consent of the Scottish Parliament: Scotland Act 1998, s. 28(7).

52 G. Little, 'Scottish Devolution and Environmental Law' (2000) 12 *J. of Environmental Law* 155; C.T. Reid, 'Devolution and the Environment' (2000) 8(2) *Hume Papers on Public Policy – Environment and Regulation* 101.

53 Scotland Act 1998, s. 63.

54 Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament* (2014).

55 Scotland Bill (Bill 3 HC) 2015–16.

56 Labour and SNP table amendments to Scotland Bill, at <<https://www.holyrood.com/articles/news/labour-and-snp-table-amendments-scotland-bill>>.

57 OECD, op. cit., n. 16, p. 6; UNDESA, op. cit., n. 31.

58 UN General Assembly, Rio Declaration on Environment and Development, 31 ILM 874.

decision-making processes of international institutions and large states can be difficult.⁵⁹ One of the benefits of carving up state power is to provide space for more discussion, debate, and civic and public engagement. Indeed, at the outset of devolution, the United Kingdom government asserted ‘that bringing government closer to the people through devolution is itself a policy for sustainable development.’⁶⁰ The Scottish Parliament provides a dedicated forum to discuss, debate, and decide Scottish matters. Moreover, those campaigning for devolution sought fundamental improvements in the informal rules and processes that influence the way Scotland is governed. Four guiding principles were developed by the Consultative Steering Group on the Scottish Parliament to inform their work on devolution, namely, sharing power; accountability; openness, accessibility, and involvement; and equal opportunities. The principles were perceived as not only essential for good governance but also reflective of Scottish national values. With cross-party support, both the Scottish Parliament and Scottish government subsequently endorsed and continue to work towards the principles.⁶¹ In line with these values, Scotland legislated beyond the scope of the Strategic Environmental Assessment Directive to include strategies as well as certain plans and programmes.⁶²

3. *Desire to improve the wellbeing of the nation and its people*

Human wellbeing now and in the future is at the core of sustainable development as defined in the Brundtland Report.⁶³ In the main, nationalist discourses are predicated on the need to protect and enhance the wellbeing of national territories or homelands and some have argued that therein lies a large part of their discursive power.⁶⁴ The overall purpose of the current Scottish

59 L.A. Duvic-Paoli, ‘The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence’ (2012) 23 *Yearbook of International Environmental Law* 80.

60 Department of Environment, Food and Rural Affairs (DEFRA), *A better quality of life – A strategy for sustainable development for the United Kingdom* (1999) para. 2.4.

61 Scottish Constitutional Convention, *Scotland’s Parliament: Scotland’s Right* (1995). See Consultative Steering Group Information Paper CSG(98)(83). Motion S1M-39 passed unanimously: see *Scottish Parliament Official Report* (SPOR) 1(8), 9 June 1999, cols. 367ff; *Scottish Ministerial Code*, para. 3.1.

62 Environmental Assessment (Scotland) 2005, s. 4(4).

63 WCED, op. cit., n. 14: its anthropocentric focus is a source of debate. See J. Robinson, ‘Squaring the Circle – Some thoughts on the idea of sustainable development’ (2004) 48 *Ecological Economics* 369.

64 A. Paasi, *Territories, Boundaries and Consciousness: The Changing Geographies of the Finnish-Russian Border* (1996). The full reality is not quite so one-dimensional, and various authors have attempted to show how discourses of nationalism are predicated on a series of more complex spatial and scalar imaginations – showing how nationalist discourses are connected to global and local imaginations: Jones and Fowler, op. cit., n. 43.

government reflects this strong desire: ‘To focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.’⁶⁵

4. *Understanding of values and views of the nation*

As discussed above in the context of sustainability discourses, real change requires a cultural acceptance that prioritizes operating within the Earth’s limits. While many individuals and collectives accept the rhetoric of limits, in terms of their actions, the future of the planet is still taken for granted.⁶⁶ As such, any attempts at reform needs to ‘reflect’, ‘belong to’, and ‘fit’ the population it hopes to influence. As a nation, Scots have certain traditions, icons, and perceived shared values that could be used to support sustainable living and challenge unsustainable behaviours. Scots perceive themselves as strongly committed to social justice; however, most research into public attitudes on social and economic policy matters shows Scots are actually close to the ‘mean’ or average view in the wider context of the United Kingdom.⁶⁷ Even on high-profile matters such as nuclear weapons and tuition fees, studies show views in Scotland to be not very different from those in England and Wales.⁶⁸ Comparison with another nation is a powerful tool of nationalism.⁶⁹ As Henderson and McEwen explain, whether values are actually distinct and divergent may be less crucial than the perception that this is the case.⁷⁰ As revealed in the case studies below, it is how these values are balanced and prioritized in practice and in different contexts that can lead to very different approaches to sustainability. Some will be more transformative than others.

65 Scottish Government, *Economic Strategy* (2007) para. A.1; (2011), updated strategy, 12; (2015), updated strategy, 4.

66 I. Lorenzoni and L. Whitmarsh, ‘Barriers perceived to engaging with climate change among the UK public and their policy implications’ (2007) 17 *Global Environmental Change* 445. E. MacDonald, T. Milfont, and M. Gavin, ‘Thinking Globally But Not Acting Locally?: Expert and Public Perceptions of Environmental Threats and Conservation Actions (2015) 20(2) *Human Dimensions of Wildlife* 1. R. Sapiains, R.J.S. Beeton, and I.A Walker, ‘The Dissociative Experience: Mediating the Tension Between People’s Awareness of Environmental Problems and Their Inadequate Behavioral Responses’ (2015) 7 *Ecopsychology* 38.

67 J. Curtice, *British Social Attitudes* 31 (2014) Table 3.1; R. Bond and M. Rosie, *National Identities in the UK: Do they Matter?* (2006); Oxfam, *Humankind Index* (2012), at <<http://policy-practice.oxfam.org.uk/blog/2012/04/what-makes-scotland-happy>>; S. Pepper, *Environment and the Economy – Helping Scotland to Flourish* (2012) 10.

68 Curtice, id., Table 2.1; J. Curtice and R. Ormiston, *British Social Attitudes* 32 (2015) 5.

69 D. Conversi, ‘Reassessing Current Theories of Nationalism: Nationalism as Boundary Maintenance and Creation’ (1995) 1 *Nationalism and Ethnic Politics* 73, at 80; Henderson and McEwen, op. cit., n. 5, p. 180.

70 Henderson and McEwen, id.

5. *Ambition to be admired and well respected on a world stage*

Being a nation as opposed to simply a sub-state can make a difference. In his study of sustainable development policy in sub-state governments, Happaerts found that international legitimacy pressures have a decisive effect on those sub-state governments that are eager to apply identity politics, in the sense that they incite them to act in order to conform to international requirements whereas other sub-state governments might be hesitant to conduct sustainable development policies all together.⁷¹ Likewise McEwen and Bomberg observe that:

Governments engaging in policy making within strong identity nations and regions often frame their goals and demands as an opportunity to maximize the region's autonomy and its voice and status within the larger state and beyond.⁷²

Successive Scottish governments have sought to increase Scotland's international standing through its role in the EU, exports, tourism, and so on. The 2015 government strategy explicitly sets out 'promoting Scotland on the international stage to boost our trade and investment, influence and networks' as one of the government's priorities.⁷³

6. *Potential to be inward looking (first tension)*

Sustainability discourses make much of the need to connect – the global and the local – witnessed most clearly in the sustainability exhortation to 'think globally and act locally'. In contrast, a key aspect of any nation is its strong association with a particular tract of land or territory thus reinforcing the notion that discourses of nationalism are ultimately centred on the national territory and the national scale.⁷⁴ 'Nations' bring together a significant number of very different individuals and groups due simply to their physical proximity or attachment to a 'place'. The affiliation with a particular place can make nationalist discourses focused on the needs and interests of the nation and not beyond. Activities within a nation including its finances, demand for imports, exports, pollution emissions, contributions of development aid, and tourism can have significant impacts elsewhere in the world. What is good for Scotland may seriously harm another part of the world.

71 S. Happaerts, 'Sustainable development and subnational governments: Going beyond symbolic politics?' (2012) 4 *Environmental Development* 2, at 13.

72 McEwen and Bomberg, *op. cit.*, n. 12.

73 Scottish Government, *op. cit.* (2015), n. 65.

74 A.D Smith, *National Identity* (1991) 14; R. Wiebe, *Who We Are: A History of Popular Nationalism* (2002) 5.

7. Potential to focus on the short term and immediate pressures

The Brundtland definition, by explicitly linking the needs of the present with the ability of future generations to meet their own needs, illustrates how sustainable development is used to connect present and future generations. In contrast, much of the explicit focus in the academic literature on nationalist discourses is on examining national pasts as well as the way in which these can inform national presents (very rarely their futures).⁷⁵ Moreover, and particularly when sub-state nations are hoping to retain power or seek more autonomy, they will want to deliver benefits to the current electorate as soon as possible. Thus, often (but not always), nationalist discourses will give more weight to resolving short-term pressures over long-term issues.

8. Potential for the dominant view to prevail

Wide public engagement and legitimacy are key features of sustainability discourses. One of the aims of introducing proportional representation into the Scottish Parliament was to get more accurate representation of the nation's views in its parliament and minority and coalition government with the resulting debates and compromises more likely.⁷⁶ The constitutional principles set out earlier also seek to widen participation. However, as in any organization, the dominant view is that of the people in charge. If, as has been the case in Scotland from 2011 to the present, the government party has an overall majority despite electoral structures designed to avoid such dominance, it can feel 'more representative' than it may actually be, its opposition is weakened, and other mechanisms designed to promote wider involvement considered unnecessary.

CASE STUDIES

1. Justification for the chosen case studies

These connections and tensions are examined in more detail using two case studies. The broad interpretation of nationalist discourses used here means they occur in all aspects of everyday life – on television, in pubs and hairdressers, online, in court, and over the fence between neighbours. This makes systematic analysis very difficult. As such, we have used the legislative process for Acts of the Scottish Parliament to structure and confine the discourses explored in our study. Almost by definition, the

75 E. Kedourie, *Nationalism* (1960); E. Hobsbawm and T.O. Ranger, *The Invention of Tradition* (1983); A.D Smith, *Nationalism and Modernism* (1998).

76 Scottish Parliament electoral system, at <<http://www.scottish.parliament.uk/visitandlearn/Education/16285.aspx>>.

legislative process and the reporting thereof provide opportunities for nationalist discourses on a readily identifiable subject by numerous actors including stakeholders and the public. This restriction also ensures Scotland, as a nation, has the capacity to address that subject. Policies and ideas are tested, differing views are sought, debated, recorded, and capable of analysis. This approach also has the benefit of imposing a natural end to the study, that being the passage of the Act. As the aim here is to explore the interaction of nationalist and sustainability discourses, both of the Acts chosen have a strong environmental content and by design, the events surrounding their passage strongly illustrate sustainability discourses in Scotland.

The limits to this approach also must be acknowledged. In the main, those involved are a self-selecting group of interested participants many of whom understand how to engage with what is a rather formal process. As such, the discourses studied while representative of a wide range of sectors within Scotland may not be necessarily be representative of the whole of the nation.

2. Case study 1 – the run-up to the Climate Change (Scotland) Act 2009 (CCSA)

This first case study illustrates how, on occasion, the connections and tensions described above can line up to point in the same direction and lead to ambitious change. In 1998, the Scottish Executive (now known as the ‘Scottish Government’) commissioned an independent expert study to improve the understanding of the implications of climate change in Scotland, to inform policy responses and to help identify measures to reduce greenhouse gas emissions. Experts were consulted representing six key sectors affected by climate change: energy; transport; domestic; public services; business; and agriculture, forestry, and fisheries. Among other things, the findings showed that it was likely that in future Scotland will be warmer, with rising sea levels, more severe weather, rainfall, and flooding. This was likely to adversely affect some bird species, marine and freshwater fisheries, and transport, as well as create new health issues in Scotland. Renewable energy sources would become increasingly important.⁷⁷

The findings were used then to inform the draft Scottish Climate Change Programme. In 2000, Sarah Boyack, then Minister for Transport and the Environment in Scotland, outlined the draft programme and urged industry, environmental interest groups, local authorities, universities, and other private and public organizations not only to take part in the consultation but to work together and help reach a consensus view on the most cost-effective

⁷⁷ Centre for the Study of Environmental Change and Sustainability, University of Edinburgh, UMIST, ITE, *The Climate Change: Scottish Implications Scoping Study* (1999).

and practical ways of combating climate change.⁷⁸ Building on this, Scottish civic society has been active in climate change issues since the beginning, encouraged by successive Scottish governments.⁷⁹

In the early 2000s, both the United Kingdom and Scotland moved forward with ambitious initiatives and together advocated stringent emissions reduction policies within the EU and internationally. Additional research continued to increase knowledge on climate change, most notably the Stern Review, *The Economics of Climate Change*, published in 2006 which concluded that climate change is the greatest and widest-ranging market failure ever seen and that the benefits of strong, early action on climate change far outweigh the costs of not acting.⁸⁰ When the United Kingdom passed the Climate Change Act 2008 that set a target to reduce greenhouse gas emissions by 34 per cent of 1990 levels by 2020 and 80 per cent by 2050, Scotland, along with the other devolved administrations, signed agreements in support.⁸¹

As noted by Royles and McEwen, successive Scottish administrations have carved out distinctive and increasingly ambitious platforms of their own while still operating within the confines of the United Kingdom programmes.⁸² For example, in 2006, the Scottish programme identified both an equitable contribution to United Kingdom emissions reduction targets ('the Scottish share') and a 'Scottish target' that would exceed the Scottish share by a million tonnes of carbon.⁸³ Following the election of the Scottish National Party (SNP) government in 2007 there was an obvious desire to exceed those targets and on 29 January 2008, the government published a consultation that set out proposals for a Scottish Climate Change Bill.

The government received a total of 21,046 responses to the consultation including 20,728 responses generated by the eight campaigns run by five non-governmental organizations – Friends of the Earth, RSPB Scotland, UNISON, the World Development Movement, and WWF. Indeed, a wide range of NGOs joined forces with church and labour organizations to form a cohesive and effective coalition under the banner, Stop Climate Chaos Scotland. Many of these groups focused on the injustices caused by climate change and its impact on vulnerable communities.⁸⁴ Through intense

78 Boyack calls for consensus on climate change commitment, at <<http://www.scotland.gov.uk/News/Releases/2000/05/5a1b418c-5e5b-4890-ae69-64bd49193b63>>.

79 Stop Climate Chaos Scotland (SCCS), at <<http://www.stopclimatechaos.org/stop-climate-chaos-scotland>>.

80 N. Stern, *The Economics of Climate Change: The Stern Review* (2007).

81 s. 1(1); The Climate Change Act 2008 (2020 Target, Credit Limit and Definitions) Order 2009 s. 2; Concordat between DECC, DEFRA, and the Devolved Administrations on the Implementation of the Climate Change Act 2008.

82 Royles and McEwen, op. cit., n. 42.

83 Scottish Executive, *Changing our Ways; Scotland's Climate Change Programme* (2006).

84 SCCS, op. cit., n. 79; video at <<https://www.youtube.com/watch?v=85detT69Rrc&feature=youtu.be>>.

lobbying it put pressure on the political parties to raise their ambitions during the passage of the Climate Change (Scotland) Bill.⁸⁵ Key business players, such as the Scottish Climate Change Business Delivery Group identified opportunities for business innovation and investment and pressed for the higher 42 per cent 2020 target in the final stages of the legislative process.⁸⁶

The CCSA, as passed unanimously by the Scottish Parliament, imposes a statutory obligation to reduce all greenhouse gas emissions by 42 per cent by 2020 and 80 per cent by 2050. The Scottish Act is broader in scope and ambition than either the preceding Scottish Executive Climate Change programmes or the United Kingdom Act and, unlike the latter, includes a higher interim target and obliges the government to set annual targets subject to parliamentary approval. It regulates the activities of government, the private sector, and individuals and covers numerous sectors, including forestry, land use, the promotion of energy efficiency, waste reduction and recycling, as well as provisions for adapting to climate change.⁸⁷

The passage of the CCSA reveals some interesting features about the relationship between sustainability and nationalist discourses and how the connections and tensions between the two can operate in practice to promote transformational change.

First, the connecting features of capacity and international ambition are evident in this case study. Climate change was not explicitly reserved under the Scotland Act 1998 and thus, by default, was within the powers of the Scottish institutions as a devolved matter. The SNP government was quick to act on what it saw as a significant international issue on the basis that a firm commitment to tackling climate change would raise Scotland's profile on an international stage. McEwan and Bomberg suggest that:

for parties seeking greater political autonomy or independent statehood, like the SNP in Scotland, climate ambition provides an opportunity to nurture perceptions of national prosperity and self-sufficiency, and to engage in 'paradiplomacy' to assert national autonomy and nurture their perception internationally as 'nation-states in waiting'.⁸⁸

It worked. The press were quick to observe that the day before the Scottish Parliament unanimously passed the 42 per cent target, the United States had stated that a 40 per cent cut by 2020 was 'not on the cards'.⁸⁹ Indeed, the

85 McEwan and Bomberg, *op. cit.*, n. 12.

86 Scottish Climate Change Business Delivery Group, written views to the Transport Infrastructure and Climate Change Committee, at <<http://archive.scottish.parliament.uk/s3/committees/ticc/inquiries/documents/WRITTENSUBMISSIONFROMCLIMATECHANGEBUSINESSDELIVERYGROUP.pdf>>.

87 Part I, s. 1–2, 2050 and 2020 targets; Part 1, ss. 3–7, annual targets; Part 5, adaptation, obligations of different sectors.

88 McEwan and Bomberg, *op. cit.*, n. 12, p. 81.

89 'Todd Stern rejects calls for 40 per cent cut in US emissions' *Guardian*, 24 June 2009, at <<http://www.theguardian.com/environment/2009/jun/24/us-carbon-emissions-stern>>.

head of WWF International's global climate initiative, said:

At least one nation is prepared to aim for climate legislation that follows the science. Scotland made the first step to show others that it can be done. We now need others to follow.⁹⁰

Next, the facts surrounding the passage of the CCSA show how more representative processes can operate in practice and highlight the strength of civic society and Scotland's policy network. Both the structure of the Bill and the ambitions included within the carbon reduction targets were subject to a broad range of influences including a significant input from the public.⁹¹ Myles summarizes the history of the Bill well:

Pressure for climate legislation was applied by environmental NGOs across the UK and duly appeared in several party manifestos, resulting in Bills at both Westminster and Holyrood. Scotland was already experiencing a growing culture of the politics of negotiation within its policy community, caused partly by the system of proportional representation used for elections, and by the ethos of participation and accessibility established by the cross-party/no party Consultative Steering Group as the basis for the operation of the new institutions. At the same time the policy capacity and expertise of the political parties was diminishing, and greater reliance was being placed on the ideas and expertise of an increasingly confident and knowledgeable civic sector.⁹²

The processes above also reveal the prominence of certain common values and views in Scots discourses, as well as the extent of the public interest in the law-making process. The findings of the Scottish-based scoping strategy sounded a chord with Scots and their representatives both inside and outside Parliament. The study was commissioned in Scotland, led by Scottish experts, and included specific facts about the impacts in Scotland. Together, with the findings of the Stern Review, Scots had the information and evidence required to form an opinion – something that chimed well with Scottish sensibilities. To quote Scots philosopher, historian, economist, and writer David Hume: 'A wise man, therefore, proportions his belief to the evidence.'⁹³ As Andy Myles, Parliamentary Officer for Scottish Environment Link explains:

Scotland does not make policy by pulling on emotional heartstrings or relying on rhetoric. Scots are argumentative – in a good way – want to talk it out, want scientific evidence, want productive debate and the political system provides that broader policy base to provide the 'space' for discussion. It is hard to find a 'non-believer' in climate change in Scotland.⁹⁴

90 'Scottish parliament agrees tougher 42 per cent target to cut emissions' *Guardian*, 24 June 2009, at <<http://www.theguardian.com/environment/2009/jun/24/scotland-climate-change-bill>>.

91 SCCS, op. cit., n. 84.

92 Interview with Andy Myles, Parliamentary Officer for Scottish Environment Link, 31 January 2014.

93 D. Hume, *An Enquiry Concerning Human Understanding* (1748).

94 Myles, op. cit., n. 92.

The story also demonstrates a strong inward focus based on the perceived benefits to Scotland. The Scottish Finance Secretary noted in introducing the Bill to Parliament that: ‘This Bill could provide huge opportunities for our economy by providing business with the certainty that it needs to make investment decisions.’⁹⁵

Finally, what is not evident in this story is an opportunity for the dominant view to prevail. Indeed, the existence of a minority government created opportunities for innovation. The Bill required opposition support to pass. This provided the broad alliance of climate campaigners (with trade unions, faith groups, and many others working with the environmentalists) with the opportunity to play a significant role. Initially, the SNP had proposed a 34 per cent target and it was Scottish Labour who was advancing a 40 per cent reduction. The final 42 per cent target is largely due to political parties successively trying to outdo one another.⁹⁶ Thus, this obvious political struggle resulted in a target with the potential to accelerate transformative change. Also, as Boyack recalls:

The thing that was significant about that bill was that it was at a point where there was no significant majority and we all had to work together and I think that the environmental campaigners saw that opportunity and made the most of it, which I think, was a good thing.⁹⁷

The passage of the CCSA reveals how connections and tensions between nationalist and sustainability discourses fortuitously aligned to push forward a more transformative sustainability agenda. Indeed, the long-term, short-term, national, and global benefits all operated to support and enhance sustainability discourses. The postscript to this story is not quite so rosy. The 2015 annual progress report shows that while Scotland has done well in implementing emission reduction measures in a number of areas such as renewable electricity generation, it missed its legislated target for the fourth consecutive year, and there has been limited progress to reduce emissions from transport and agriculture, with ‘carbon sinks’ (such as forests) also falling short of government targets.⁹⁸ This more mixed picture illustrates the balancing and evolutionary nature of sustainability discourses and the extent progress depends on the political climate and context of the discourses.

95 John Swinney, Cabinet Secretary for Finance and Sustainable Growth, speech in Scottish Parliament, 21 June 2007.

96 ‘Climate Change targets tougher’ *BBC Online*, 23 June 2009, at <<http://news.bbc.co.uk/1/hi/scotland/8114193.stm>>.

97 Interview with Sarah Boyack MSP (Scottish Labour), Shadow Cabinet Secretary for Rural Affairs, Food and Environment, and former Minister for the Environment, Planning and Transport, 12 March 2014.

98 Committee on Climate Change, *Reducing emissions in Scotland: 2015 Progress Report*, at <<https://www.theccc.org.uk/2015/03/24/good-progress-but-much-more-to-do-to-fulfil-scotlands-ambition/>>.

3. Case study 2 – the duties to achieve sustainable economic growth in the *Regulatory Reform (Scotland) Act 2014 (RRSA)*

The next case study analyses the discourses leading up to the passage of the RRSA and, more specifically, the crystallization of the government's overall purpose of increasing sustainable economic growth into law. In contrast to the previous case study, it describes a complex and muddled journey with an indecisive outcome. The direction was set by the dominant territorial politics of a majority government and then supported and challenged by differing views within broader nationalist discourses. The story depicts the reality of most sustainability discourses within nations. While it shows the tensions between the two discourses pulling in opposite directions, on a more positive note it also shows how the connections between the discourses can provide opportunities to encourage more transformative actions that are broadly acceptable to the nation.

The story begins in 2007 when, following its election to government, the victorious SNP was quick to replace the previous government's sustainable development strategy with its own *Economic Strategy* (the 'Strategy').⁹⁹ In it, Scottish government adopted a single purpose: 'To focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.' The Strategy in its entirety sets out a systematic approach to governance that is clear, focused, and SMART (specific, measurable, achievable, relevant, and time-bound).¹⁰⁰

The government's intention is to mainstream sustainable development across government through its commitment to 'sustainable economic growth'. Its approach to sustainability, at least on its face, is not aligned with the United Kingdom Framework as it appears to favour economic growth over social and environmental factors. Policy is not binding and the new purpose attracted only a limited amount of grumbling. As the Sustainable Development Commission in Scotland (SDCS) concluded in 2009: 'taken as a whole, the Purpose, with its emphasis on "opportunities for all of Scotland to flourish" requires Government to address wider sustainable development issues.'¹⁰¹ The strategy did raise some procedural concerns as it was not subject to a Strategic Environmental Assessment or any other form

99 Scottish Government, op. cit. n. 65; little has changed under First Minister Nicola Sturgeon. See id. (2015 Strategy), p. 4. For a fuller analysis, see A. Ross, 'The future Scotland wants – is it really all about sustainable economic growth?' (2015) 19 *Edinburgh Law Rev.* 66.

100 Further detail is set out in Scottish Government, *National Performance Framework* (2011), at <<http://www.gov.scot/Resource/Doc/933/0124202.pdf>>. G.T. Doran, 'There's a S.M.A.R.T. way to write management's goals and objectives' (1982) 70(11) *Management Rev.* (AMA FORUM) 35.

101 Sustainable Development Commission (Scotland), *Sustainable Development: Third Annual Report of Progress by the Scottish Government* (2009) 6.

of public consultation.¹⁰² From 2007 to 2015 the strategy, its overall purpose, and approach remained largely unchanged¹⁰³ and been incorporated into key strategic documents, including those relating to land and marine planning, the NHS, and historic buildings.¹⁰⁴

In August 2012, the government published a consultation paper on proposals for a better regulation Bill that, among other things, sought views on a duty to promote economic and business growth in regulatory activity.¹⁰⁵ This reflected concerns raised by the business community in Scotland. A study by the Federation of Small Businesses (FSB) in 2012 reported that:

around 30 per cent of FSB members in Scotland have cited regulation as the biggest barrier to growth. In addition, 62 per cent of our members report that the costs of complying with regulation have increased over the past four years.¹⁰⁶

An independent analysis of the 80 responses found opinion divided about imposing a new economic duty on regulators: 41 per cent of respondents, mainly local authorities, the third sector, and individuals saw it as a diversion from the main purpose of regulation and were against its introduction. Another 29 per cent, mostly from businesses and trade associations, were in favour of the duty and a further 31 per cent of respondents had mixed views.¹⁰⁷

There was also a view that the time had come for the Scottish Environment Protection Agency (SEPA) to have a statutory purpose and update its funding arrangements, enforcement powers, and offences.¹⁰⁸ The government chose to consult on changes relating to SEPA jointly with SEPA, in two stages.¹⁰⁹ The second consultation proposed a new purpose for SEPA

102 Ross, *op. cit.*, n. 30, ch. 4.

103 Scottish Government, *op. cit.* (2007), n. 65.

104 Historic Scotland, *Scottish Historic Environment Policy* (2011); Scottish Government, *Scottish Planning Policy* (2010); Scottish Government, *Planning Scotland's Seas – Scotland's National Marine Plan Consultation Draft* (2013), at <<http://www.scotland.gov.uk/Publications/2013/07/9185/downloads>>; Scottish Government, *The Healthcare Quality Strategy for NHS Scotland* (2010).

105 Scottish Government, *Consultation on Proposals for a Better Regulation Bill* (2012) para. 1.8, at <<http://www.gov.scot/Publications/2012/08/8403/>>.

106 Federation of Small Businesses, *Local regulation in Scotland – the case for change* (2012), at <http://www.fsb.org.uk/policy/rpu/scotland/assets/publi_spec_regulation_feb2012.pdf>.

107 Geoff Peart Consulting with C. Tibbles, *Better Regulation Bill: Analysis of Consultation Responses* (2013), at <<http://www.gov.scot/Resource/0041/00416825.pdf>>.

108 Scottish Environment Protection Agency (SEPA)/Scottish Government, *Consultation on Proposals for an Integrated Framework of Environmental Regulation. Analysis of Responses* (2012), at <<http://www.gov.scot/Resource/0041/00411494.pdf>>.

109 The first sought views on a single proportionate and risk-based permissioning structure, a single consistent regulatory procedure (with common terminology), and a flexible approach to permissioning. SEPA/Scottish Government, *Consultation on*

that included a reference to contribute to ‘the achievement of sustainable economic growth’.¹¹⁰ While most respondents (62 per cent) agreed SEPA should have a statutory purpose,¹¹¹ once again, the respondents were divided about proposals to replace its existing sustainable development provisions with a reference to sustainable economic growth.¹¹² Moreover, the process itself was arguably flawed – the new purpose is not in the title of the consultation, it was not published on the government website immediately, and the individual responses were not published online.¹¹³

Despite the concerns raised in the consultation period, the Regulatory Reform (Scotland) Bill introduced by the government in the Scottish Parliament requires certain public bodies, in exercising their regulatory functions,¹¹⁴ to contribute to achieving sustainable economic growth, except to the extent that it would be inconsistent with the exercise of those functions to do so. Subsequent provisions set out powers for the Scottish Ministers to give guidance to regulators and issue a code of practice.¹¹⁵ The above does not apply where a regulator is, by or under an enactment, already subject to a duty to the same effect as that mentioned in that subsection.¹¹⁶

The Bill also introduced a new general purpose for SEPA to carry out its functions ‘for the purpose of protecting and improving the environment (including managing natural resources in a sustainable way).’ In carrying out its functions for that purpose SEPA must, except to the extent that it would be inconsistent with [the above] to do so, contribute to:

- (a) improving the health and wellbeing of people in Scotland, and
- (b) achieving sustainable economic growth.¹¹⁷

Proposals for an Integrated Framework of Environmental Regulation (2012), at <<http://www.gov.scot/Resource/0039/00392549.pdf>>. Most of the 89 respondents saw these proposals as mainly positive.

110 SEPA/Scottish Government, *Consultation on Future Funding Arrangements for the Scottish Environment Protection Agency* (2012), at <<http://www.gov.scot/Publications/2012/10/1984>>.

111 SEPA/Scottish Government, *Consultation on Future Funding Arrangements for the Scottish Environment Protection Agency. Analysis of Responses* (2013), at <<http://www.sepa.org.uk/media/116082/consultation-on-proposals-for-future-funding-arrangements-for-sepa-analysis-of-responses.pdf>>.

112 id.; as set out in the Environment Act 1995, s. 31.

113 Rural Affairs, Climate Change and Environment Committee (RACCEC), 6th Report, 2013 (Session 4): *Report on the Regulatory Reform (Scotland) Bill*, SP Paper 376 RACCE/S4/13/R6, at <http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/Reports/rur-13-06w.pdf>.

114 s. 4(1); Schedule 1 – the list of public bodies includes: the Accountant in Bankruptcy, the Food Standards Agency, Healthcare Improvement Scotland, local authorities, the Scottish Charity Regulator, SEPA, Scottish Fire and Rescue Service, Scottish Housing Regulator, Scottish Natural Heritage, Social Care and Social Work Improvement Scotland, and VisitScotland.

115 s. 4(2), 5, 6.

116 s. 4(4).

117 s. 38 inserts s. 20A into the Environment Act 1995.

The Bill was examined by three parliamentary committees: the Delegated Powers and Law Reform Committee (DPLRC), the Economy, Energy and Tourism Committee (EETC), and the Rural Affairs, Climate Change and Environment Committee (RACCEC). Many individuals and groups in Scotland from a wide range of backgrounds and sectors took the opportunity provided by the legislative process to provide evidence to parliamentary committees on the Bill, including the merit of the two duties to contribute to achieving sustainable economic growth.¹¹⁸ Opinion on the two duties was split between groups of witnesses. Those in favour of the duty, mainly business representatives and the government itself, focused their evidence on the Bill's better regulation objective and sought predictable, efficient regulation.¹¹⁹ The FSB Scotland stated that 'A duty to contribute to sustainable economic growth could provide stronger focus on improving how regulators interact with businesses, with the aim of facilitating compliant growth.'¹²⁰

Other respondents including Green Party MSPs, the Convention of Scottish Local Authorities, the Law Society of Scotland, the Royal Society for the Protection of Birds, Scottish Trades Union Congress, and UNISON raised concerns over the potential of the duties to prioritize economic growth over other environmental and social objectives.¹²¹ Representatives from several sectors, including business, raised concerns about the ambiguity caused by the wording of the duties and their relationship with existing obligations on public bodies including those relating to sustainable development and best value.¹²²

All three committee reports raised concerns. The DPLRC warned of the limited scrutiny offered for the proposed guidance and the code of practice.¹²³ The RACCEC report expressed unease about the meaning of sustainable economic growth and how the duty and the code of practice would impact on the day-to-day activities of regulators. It also questioned why the term sustainable economic growth was used instead of sustainable development since, while neither has a statutory definition, sustainable

118 Ross, *op. cit.*, n. 99.

119 Several other provisions in the Bill promote 'better regulation' more directly, including powers to make regulations to encourage and improve consistency in the exercise of regulators' functions and to issue a code of practice in relation to the exercise of regulatory functions (ss. 1 and 5).

120 See, also, written evidence of Scottish Council for Development and Industry. Economy, Energy and Tourism Committee (EETC), 11th Report, 2013 (Session 4): *Stage 1 Report on the Regulatory Reform (Scotland) Bill*, SP Paper 399, EET/S4/13/R11, Annex D, 3, at <http://www.scottish.parliament.uk/S4_EconomyEnergyandTourismCommittee/Reports/eer-13-11w.pdf>.

121 *id.*

122 *id.*, paras. 65–71.

123 Delegated Powers and Law Reform Committee (DPLRC), 40th Report, 2013 (Session 4): *Regulatory Reform (Scotland) Bill*, SP Paper 373, DPLR/S4/13/R40, at <http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/sur-13-40w.pdf>.

development has international recognition, is understood legally across a number of regimes and jurisdictions, and has been used in previous Scottish legislation.¹²⁴ The lead EETC report noted that Parliament and the Scottish government have a duty to minimize the risk of future conflicts by ensuring that the Scottish government's definition of sustainable economic growth is explicitly stated and explained in subsequent guidance.¹²⁵

Given the government majority in Parliament, it is unsurprising that the RRSA 2014 was passed on 16 January 2014 broadly unchanged.

The events surrounding the passage of the RRSA show the tensions between nationalist and sustainability discourses and how some issues can cause views to converge while others divide opinion. It also reveals how the balancing inherent in sustainability discourses occurs in practice and how difficult it is in practice to move beyond business-as-usual decision making.

There was never any doubt that the Scottish government had the capacity to legislate in this case. Instead, it is the use of that capacity, the effect of a majority government, and the impact of this on the processes of Scottish nationalist discourses that is of interest here. The case study reveals how nationalist ambitions and a desire to show strong leadership with measurable results can run counter to transformative sustainability discourses. One reason behind the SNP government focusing on sustainable economic growth was that it wanted to establish itself as more than a single-issue party and be accepted as a party of governance, capable of running a separate, independent Scotland. By prioritizing the economy and presenting its approach in a clear and logical economic strategy, it did send that message.

However, in doing so, the Scottish government twice chose to ignore accepted processes and values of nationalist discourses in Scotland that are also important to effective sustainability discourses. The government failed to complete a strategic environmental assessment for the economic strategy that first introduced 'sustainable economic growth' or consult properly on it. It also failed to consult properly on the purpose and functions of SEPA, instead largely leaving it to the Agency, and then failed to fully publish both the consultation and its responses. It is disheartening to see these processes set aside as they embody and promote shared responsibility and governance and are essential to the wider acceptance of any approach to sustainable development. It is also an example of the dominant view prevailing and how the perceived legitimacy of a majority government can be used to justify the circumvention of accepted processes designed to promote wider nationalist discourse. However, on a more positive note, even faced with a majority government, civic society in Scotland had the space to influence decision making, and the postscript to this story illustrates the resilience of these wider processes. Subsequent to the passage of the Act, the government has

124 RACCEC, *op. cit.*, n. 113.

125 EETC, *op. cit.*, n. 120, recommendation 7.

actively responded to the concerns surrounding the term ‘sustainable economic growth’ and discussion continues, especially in relation to the emphasis on growth and its relationship with sustainable development. Serious efforts have been made through codes of practice and guidelines to try to suitably define sustainable economic growth and meaningfully relate it to sustainable development. Since the passage of the RRSA, the government has presented no fewer than four different interpretations for sustainable economic growth thus fine-tuning government policy to make it more widely accepted by stakeholders and the public.¹²⁶ Some of these subsequent interpretations, are more ecologically focused than others.¹²⁷

The events surrounding the passage of the RRSA illustrate the plurality of values in both nationalist and sustainability discourses and how civic society and wider policy networks challenged the perceived prioritization of the economy to include justice and environmental factors. Sustainability is rarely about win-win-win and is more often about trade-offs and making hard choices. The events leading up to and following the passage of the RRSA reveal the importance of the economy to both nationalist and sustainability discourses in Scotland. It also, however, reveals the extent to which views about its role in sustainable development are polarized. A reason behind the government’s attachment to the phrase ‘sustainable economic growth’ is that it considers the economy to be a key focus for Scots. However, while many Scots appreciated economic arguments behind the SNP government’s attempt to ‘do things differently’ from Westminster by sidestepping the concept of sustainable development and introducing their own term, ‘sustainable economic growth’, concerns were raised in many sectors that ‘growth’ does not take into account wider social justice aspects encompassed in the wider term ‘development’.¹²⁸ These observations are consistent with studies that show that there is a small but consistent tendency for those identifying as Scottish to hold strong social democratic values and a distinct conception of the welfare state that is favourable to universalism.¹²⁹

126 See Ross, op. cit., n. 99; Pepper, op. cit., n. 67, p. 12.

127 Note evolution within: Scottish Government, *Draft Scottish Planning Policy* (2013) paras. 15–16, at <<http://www.scotland.gov.uk/Publications/2013/04/1027/0>>; Scottish Government, *Draft SPP Sustainability and Planning* (2013) para. 4, at <<http://www.scotland.gov.uk/Resource/0043/00437081.pdf>>. This definition now appears in Scottish Government, *Scottish Planning Policy* (2014) para. 25, at <<http://www.gov.scot/Resource/0045/00453827.pdf>>. See, also, Scottish Government, op. cit. (2013), n. 104; Scottish Government, *Scottish Regulators’ Strategic Code of Practice* (2014) Annex A, at <<http://www.gov.scot/Resource/0046/00467429.pdf>>. For a fuller analysis, see Ross, id.

128 STUC written evidence and Carnegie Trust written evidence to EETC: EETC, op. cit., n. 120.

129 L. Paterson, ‘Governing from the Centre: Ideology and Public Policy’ in *New Scotland, New Society? Are Social and Political Ties Fragmenting?*, eds. J. Curtice, D. McCrone, A. Park, and L. Paterson (2002); Bond and Rosie, op. cit., n. 67; Keating, op. cit., n. 5, p. 373.

Hearn describes this, using the concept of moral economy to capture a diffuse sense of what is fair which acts to moderate the application of purely market criteria in public affairs.¹³⁰ One positive observation from this case study is that the processes allowed these divergent views to be revealed and debated, and that the attempts at consensus continue to evolve.

The case study also reveals a plurality of views about the future within both nationalist and sustainability discourses. The consultations and legislative passage of the RRSA took place between 2012 and 2014 at the same time as the campaigns on the referendum for Scottish independence. The key advocates for the new duty for sustainable economic growth were the SNP government who were clearly also in favour of independence; their key political opponents on the duty were the Green Party who were also pro-independence. Thus, the alternative views on sustainability were not aligned to particular views about whether Scotland was better in or out of the United Kingdom. To quote Patrick Harvie MSP and Leader of the Scottish Green Party:

On many issues, Greens part company with others in the pro-independence movement . . . we could be pioneering new approaches to economics, replacing the outdated and misleading GDP statistics with indicators showing the health and wellbeing of our population, the strength of our communities, the sharing of our wealth and the ecological limits we live within.¹³¹

Indeed, by showcasing the two parties in favour of Yes – the SNP and the Scottish Green Party – offering very different visions of an independent Scotland, the debates also revealed how different visions of Scotland's future would play out in practice.

CONCLUSIONS

Talking about sustainable development is relatively easy; however, delivering the transformative action necessary to actually make it happen has proven much more difficult. Having a Parliament dedicated to Scottish issues has given Scotland increased capacity to make transformative change and a forum for debating key issues for sustainability. However, real change also requires a cultural acceptance that prioritizes operating within the Earth's limits and thinking about the long-term effects of policies and decisions. This article has examined the potential of nationalist discourses as a vehicle for promoting this cultural change. More specifically, it has identified certain tensions and connections between sustainability and nationalist discourses.

130 J. Hearn, *Claiming Scotland. National Identity and Liberal Culture* (2000).

131 P. Harvie, 'Perspective: Why a Yes voter needn't be a nationalist' (10 January 2013), at <<http://www.yesscotland.net>>.

Occasionally, the connections between nationalist and sustainability discourses can point to the same transformative action; views align. The connections between the two discourses then reinforce the action and change is easy. At other times, long-term, global interests may be contrary to short-term, nationalist ones. The tensions are real, and difficult choices need to be made. Often the compromises made do not lead away from business-as-usual policy making. However, the case studies above suggest that it may be worthwhile in these circumstances to recall and maximize the connections between sustainability and nationalist discourses by, for example, promoting more representative decision making, focusing on improving wellbeing, understanding the values and views of the nation, and improving its standing outside its borders.

This approach is supported by the views of those involved in sustainability advocacy and policy development in Scotland. For example, framing sustainability arguments in economic and welfare terms resonates well with Scots. As a former Cabinet Minister, Sarah Boyack notes that:

The argument I always make is that if something is good for the environment, good for people's quality of life then it is invariably good for the economy and one of Scotland's big challenges is to create jobs that pay people decent amounts and that are good for the long term.¹³²

In Scotland, therefore, environmental limits could be added to policy making by putting it in the context of wellbeing, distributional justice, and fairness.¹³³ The Scottish Labour-Liberal Democrat coalition government explored this link in their focus on environmental justice.¹³⁴ The current government under Nicola Sturgeon's explicit focus on tackling inequality could also potentially include inter-generational equity.¹³⁵ Likewise, Scots are more likely to engage in policy making if presented with the right evidence. As Myles explains: 'If we want to advocate sustainability, we need to be authoritative, we need to get the facts right and they need to be scientifically based.'¹³⁶

Arguably, these connections and tensions are present in all decision-making processes within nations. However, as noted above, how they interact with each other, the weight attached to each, the balancing and compromises that follow will vary and this makes each situation, even within

132 Boyack, op. cit., n. 97.

133 K. Bosselmann, *The Principle of Sustainability: Transforming Law and Governance* (2008) 53–7; Ross, op. cit., n. 30, p. 293.

134 Scottish Centre for Social Research et al., *Public Attitudes and Environmental Justice in Scotland* (2005) The development and passage of the Wellbeing of Future Generations (Wales) Act 2015 also provides an excellent example of how pressure was put on the assembly to consider interests outside Wales. National Assembly for Wales Environment and Sustainability Committee, *Wellbeing of Future Generations Bill Stage 1 Committee Report*, November 2014, recommendation 9.

135 Scottish Government (2015), op. cit., n. 65.

136 Myles, op. cit., n. 92.

the same nation, specific to its context. Within Scotland, besides the two case studies, the relationship between sustainability and nationalist discourses is well illustrated in the discussions about the new rules on land reform, marine spatial planning, and genetically modified crops. More widely, the varying opinions over the need for austerity and particular austerity measures demonstrate the relationship between sustainability and nationalist discourses in different nations.

There is no guarantee that nationalist discourses will promote transformative visions of sustainability. However, engagement at the level of 'nation' may lead to sustainability discourses that are more attuned to the priorities of particular groups of people and improve public understanding and acceptance of the need for transformative change by tailoring the substance of sustainability discourses to nationalist values, as well as providing additional opportunities for debate, public participation, and education.